Dariush G. Adli, SBN 204959
adli@adlilaw.com
Drew Sherman, SBN 237045
drew.sherman@adlilaw.com
Paul I. Menes, SBN 97736
paul.menes@adlilaw.com
ADLI LAW GROUP P.C.
444 South Flower Street, Suite 3100
Los Angeles, California 90071
Telephone: 213-623-6546
Facsimile: 213-623-6554

Attorneys for Plaintiff, A.C.T. 898 Products Inc.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

A.C.T. 898 Products Inc., a California Corporation, *Plaintiff,* v. CLASS INTERNATIONAL, INC., a California Corporation, dba KRYSTAL PRODUCTS, CO., KRYSTAL KUT, an unknown entity; and DOES 1 through 10, inclusive, *Defendants.*	Case No. **PLAINTIFF'S COMPLAINT FOR DECLARATORY RELIEF 28 U.S.C. §§ 2201, COMMON LAW TRADEMARK INFRINGEMENT, CALIFORNIA UNFAIR COMPETITION; CALIFORNIA INJUNCTIVE RELIEF AND APPOINTEMENT OF A RECEIVER** **[JURY TRIAL DEMANDED]**

Plaintiff A.C.T. 898 Products Inc. ("ACT 898") alleges as follows for its complaint against CLASS INTERNATIONAL, INC., a California Corporation, dba KRYSTAL PRODUCTS, CO. ("CLASS") and Does 1-10, inclusive (collectively, "Defendants.").

THE PARTIES

1. Plaintiff ACT 898 is a California Corporation existing under the laws of California with its principal place of business at 14309 Proctor Ave., La Puente, CA 91746.

2. Upon information and belief, Defendant, CLASS INTERNATIONAL, INC., dba KRYSTAL PRODUCTS, CO. is a California Corporation with its principal place of business at 7249 Alondra Blvd., Paramount CA 90723.

3. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, associate, partnership, or otherwise of each of the Defendants sued herein as Does 1 through 10, inclusive, and therefore sues said Defendants by such fictitious names. Such unnamed defendants include, but are not limited to: (a) officers and/or directors who acted in concert with Defendants against Plaintiff; (b) other entities affiliated with Defendants that acted in concert with Defendants against Plaintiff; and (c) individuals or entities with whom Defendants acted in concert with Defendants against Plaintiff. Plaintiff reserves the right to name such Does as discovery from Defendants reveal their identities.

4. Plaintiff is informed and believes and thereon alleges that each of the Defendants named herein as a Doe was and is negligently, intentionally, or both negligently and intentionally responsible in some manner for the occurrences herein alleged, and the injuries and damages suffered by Plaintiff as herein alleged were the direct and proximate result of, and caused by the acts and omissions of the Defendants.

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JURISDICTION AND VENUE

5. This action arises under the trademark laws of the United States, Title 35 of the United States Code, § 1 *et seq.*, with a specific remedy sought under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. An actual, substantial, and continuing justiciable controversy exists between ACT 898 and CLASS that requires a declaration of rights by this Court.

6. This Court has subject matter jurisdiction over the trademark cancellation and non-infringement claims pursuant to 28 U.S.C. §§ 1331 and 1338(a).

7. The Court has supplemental jurisdiction over the claims in this Complaint, which arise under state statutory and common law pursuant to 28 U.S.C. § 1367(a) because the state law claims are so related to the federal claims that they form part of the same case or controversy and derive from a common nucleus of operative facts.

8. This Court has personal jurisdiction over Defendants by virtue of Defendant's purposeful contact with this district, including, on information and belief, substantial business conducted with customers residing in this district; and Defendant's attempts to enforce a trademark purportedly registered to it against ACT 898's customers and ACT 898 itself, for alleged infringing activity occurring in California.

9. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and (c) and 1400(b).

FACTUAL BACKGROUND

10. Plaintiff is in the business of providing the manufacture, distribution, and wholesale supply of beauty products, specifically including, but not limited to, cosmetic brushes and nail brushes, across the U.S. and around the world, and has been in that business since 1997. ACT 898 uses several trade names and marks to identify its services and products, specifically including, inter alia, the MISAKI mark for its products.

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11. ACT 898 was the first entity to use the MISAKI mark in association with its cosmetic and nail products in the U.S. and around the world. As a result of ACT 898's widespread usage of the MISAKI mark consumers have become extensively known and ACT 898 has become identified in the public mind as the provider of the cosmetic products identified by the MISAKI mark.

12. ACT 898 has applied for United States trademarks, including U.S. Trademark Application number 8,7057,043 ("'043 Application"), filed on June 1, 2016, for its MISAKI mark, which is pending at the U.S. Patent and Trademark Office. Attached hereto as Exhibit A is a true and correct copy of the '043 Application for the MISAKI mark.

13. Plaintiff has used the MISAKI mark continuously in trade and commerce since at least 1999.

14. The MISAKI mark has not been abandoned, canceled, or revoked.

15. On or about April 14, 2017, CLASS contacted ACT 898 by letter, informing ACT 898 that it was the owner of the MIS AKI Trademark, per Registration Number 4671788, with the registration date of January 13, 2015 ("the '788 Registration") and alleging that ACT 898 is advertising, distributing, and selling products that falls within the scope of the MISAKI Trademark (the "Accused Products") and that Defendants consider ACT 898's conduct infringing on the '788 Registration. A copy of this letter is attached herewith as Exhibit B. A copy of the '788 Registration is attached as Exhibit C.

16. The '788 Registration states that GLASS first used the MISAKI mark in trade and commerce on March 6, 2008.

17. Plaintiff is the manufacturer and seller of the Accused Products.

18. Plaintiff provides the Accused Products to the entities, which sell them through retail channels from which Defendants believe it is being damaged.

19. Exhibit B identifies CLASS as the registrant of the MISAKI mark.

20. Plaintiff adopted the MISAKI mark without actual or constructive

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knowledge of the GLASS's use of the mark.

21. Plaintiff used the MISAKI mark in trade and commerce before GLASS filed the '788 Registration.

22. As a result of Defendants' assertions that ACT 898's customers, and, by its manufacturing and selling the Accused Products, ACT 898 is infringing the MISAKI Trademark, and ACT 898's denial of the same, an actual and justiciable controversy exists between the parties of sufficient immediacy and reality to warrant issuance of a declaratory judgment under 28 U.S.C. §§ 2201 and 2202 as to the alleged infringement of the mark claimed in the MISAKI Trademark.

23. Plaintiff, by virtue of its earlier and continuous use of the MISAKI mark in trade and commerce is the common law owner of the MISAKI mark.

FIRST CLAIM FOR RELIEF

(Cancellation of the '788 Registration)

24. Plaintiff restates and incorporates by reference, as if fully set forth herein, the allegations contained in the preceding paragraphs 1 to 23.

25. Plaintiff, possesses a senior interest in the MISAKI mark over a junior user GLASS due to Plaintiff's prior widespread and continuous use of the MISAKI mark.

26. By virtue of the April 14, 2017 letter, alleging trademark infringement and demanding that Plaintiff cease and desist the use of "MISAKI" on the Accused Products, a controversy exists between the parties to this action that warrants the Court to declare whether Defendant can validly claim any intellectual property rights in the MISAKI mark.

27. Defendants do not have any valid or enforceable trademark rights in the MISAKI mark.

28. Plaintiff seeks cancellation of the '788 Registration under section 37 of the Lanham Act, including, without limitation, 15 U.S.C. §§ 1119, 1052.

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SECOND CLAIM FOR RELIEF

(Declaratory Judgment of Non-Infringement of the MISAKI Trademark)

29. ACT 898 restates and incorporates by reference the allegations in paragraphs 1 through 28 above.

30. An actual controversy has arisen and now exists between the parties with respect to ownership of the MISAKI mark. ACT 898, as senior user and proper owner of the mark, contends that the Accused Products have not infringed and do not infringe the '788 Registration.

31. ACT 898 alleges that Defendants dispute these contentions.

32. The allegations of trademark infringement by Defendants have placed a cloud over ACT 898's business (and that of its customers) and ACT 898's products, in the retail channels where ACT 898 does business. These allegations are likely to cause ACT 898 to lose revenues and business opportunities. Defendants' actions and assertions, therefore, will likely cause irreparable injury to ACT 898.

33. Pursuant to 28 U.S.C. §§ 2201 and 2202, a judicial determination of the respective rights of the parties with respect to the alleged infringement of the MISAKI Trademark is necessary and appropriate under the circumstances.

THIRD CLAIM FOR RELIEF

(California Common Law Trademark Infringement)

34. ACT repeats and re-alleges the allegations of paragraphs 1-33 of this Complaint as if set forth fully herein.

35. ACT 898, as senior user of the MISAKI mark, is the proper legal owner of the MISAKI mark.

36. This is a claim for trademark infringement, arising under California common law.

37. Defendants' acts complained of herein constitute trademark infringement under California common law. ACT 898 is informed and believes, and thereon alleges, that Defendants' acts complained of herein are willful and deliberate and

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committed with knowledge that Defendants' unauthorized use of the MISAKI mark and ACT 898's common law trademarks causes a likelihood of confusion.

38. ACT 898 is informed and believes, and thereon alleges, that Defendants have derived and received and will continue to derive and receive, gains, profits and advantages from Defendants' trademark infringement in an amount that is not presently known to ACT 898. By reason of Defendants' wrongful acts as alleged in this Complaint, ACT 898 has been damaged and is entitled to monetary relief in an amount to be determined at trial.

39. Due to Defendants' trademark infringement, ACT 898 has suffered and continues to suffer great and irreparable injury for which ACT 898 has no adequate remedy at law.

40. Defendants' willful acts of trademark infringement under California common law constitute fraud, oppression, and malice. Accordingly, ACT 898 is entitled to exemplary damages.

FOURTH CLAIM FOR RELIEF

(CALIFORNIA UNFAIR COMPETITION)

41. ACT 898 repeats and re-alleges the allegations of paragraphs 1-40 of this Complaint as if set forth fully herein.

42. ACT 898 is informed and believes, and thereon alleges, that Defendants' acts of trademark infringement, complained of herein constitute unfair competition with ACT 898 under the statutory laws of the State of California, particularly California Business & Professions Code § 17200 et seq.

43. Defendants have derived and received, and will continue to derive and receive, gains, profits and advantages from Defendants' unfair competition in an amount that is not presently known to ACT 898.

44. Defendants have injured and violated the rights of ACT 898 and have irreparably injured ACT 898, and such irreparable injury will continue unless Defendants are enjoined by this Court.

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FIFTH CLAIM FOR RELIEF

(CALIFORNIA NJUNCTIVE RELIEF AND APPOINTMENT OF A RECEIVER)

45. ACT 898 repeats and re-alleges allegations 1through 44 as set forth above as if set forth fully herein.

46. The Lanham Act provides that a court may grant injunctive relief in favor of a trademark owner to prevent further acts of infringement. 15 U.S.C. § 1116(a).

47. ACT 898 is informed, believes, and based thereon alleges that Defendants continue to benefit from their trademark infringement.

48. Defendants ongoing use of ACT 898's MISAKI mark, unless and until enjoined and restrained by order of this Court, will cause grave and irreparable injury to ACT 898.

49. ACT 898 has no adequate remedy at law for the ongoing and threatened conduct in that it would be impossible for ACT 898 to determine the precise amount of damage ACT 898 will suffer if Defendants' conduct is not restrained and ACT 898 will be deprived of its customers which cannot be compensated in damages.

50. Defendants, and each of them, committed and will continue to commit acts of infringement for personal benefit all to the detriment of the ACT 898.

51. Due to the fact that, based upon the aforesaid and previously mentioned wrongful conduct of Defendants, and each of them, there is an imminent threat of irreparable harm unless the Court appoints a receiver pedente lite to take over the affairs, management, operation, and control of Defendants, such that ACT 898 therefore seeks the immediate appointment of a receiver and Court order that the cost and expenses of such receivership be first initially paid by and from Defendants, and each of them.

PRAYER FOR RELIEF

WHEREFORE, ACT 898 prays for judgment in its favor against Defendants for the following relief:

A. A declaration by this Court cancelling the ‘788 Registration;

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B. A declaration by this Court that the '788 Registration is not infringed;

C. Preliminary and permanent injunction against Defendants, their officers, agents, servants, employees, representatives, successors, and assigns, and all persons, firms, or corporations in active concert or participation with Defendants, enjoining them from engaging in the following activities and from assisting or inducing, directly or indirectly, others to engage in the following activities:

1. using the MISAKI mark, or any other mark, symbol, or logo that is confusingly similar to the MISAKI mark on or in connection with any products, including but not limited to, marketing, advertising and selling or offering for sale cosmetic brushes and nail brushes;
2. falsely designating the origin of Defendants' products;
3. unfairly competing with ACT 898 in any manner whatsoever;
4. making false or misleading statements, descriptions of fact, or false or misleading representations of fact;
5. causing a likelihood of confusion or injuries to ACT 898's business reputation; and
6. manufacturing, using, displaying, distributing, or selling any goods that infringe the MISAKI mark.

D. That ACT 898 be awarded damages for Defendants' trademark infringement in an amount to be proved at trial.

E. The ACT be awarded damages for Defendants' common law trademark and infringement pursuant to California Business & Professions Code § 17200 et seq and § 17500.

F. That Defendants' acts of trademark infringement complained of in this Complaint be deemed willful; that this be deemed an exceptional case; and that ACT be entitled to enhanced damages.

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G. An award of pre-judgment and post-judgment interest and costs of this action against Defendants.

H. An award of attorneys' fees and costs.

I. Such other and further relief as this Court may deem just.

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Dated: May 1, 2017

By: */S/ Dariush Adli*
Dariush G. Adli
Drew Sherman
Paul Menes
Attorneys for Plaintiff A.C.T. 898 Products Inc.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury on all issues triable as such.

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Dated: May 1, 2017

By: */S/ Dariush Adli*
Dariush Adli
Attorneys for Plaintiff A.C.T. 898 Products Inc.

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(213) 623-6546